In the High Court of Punjab and Haryana at Chandigrh.

RSA No.1681 of 2003
Date of decision: 28.05.2007

Bhinder Singh ....Appellant

Versus

The Zila Parishad and another. ....Respondents.

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HON'BLE MR. JUSTICE PERMOD KOHLI

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Present: Mr. SK Chawla, Advocate, for the appellant.
Mr.DK Kaushal, Advocate,for the respondent.

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PERMOD KOHLI, J.

This Regular Second Appeal is directed against the judgment and decree dated 04.02.2003 passed by the learned District Judge, Faridkot, whereby two appeals being Civil Appeal Nos.19 of 2001 (Zila Parishad and another Vs. Bhinder Singh) and 15 of 2001 (Bhinder Singh Vs. The Zila Parishad and another), against the judgment and decree dated 31.01.2001 passed by the learned Civil Judge (Junior Division),Faridkot, have been

decided.

The appellant herein, was an employee of the Zila Parishad, Faridkot. He was appointed as Sweeper-cum-Chowkidar vide appointment letter dated 17.05.1995. His services were dispensed with vide order dated 13.03.1996 on the ground that his work and conduct was un-satisfactory. This order came to be passed during the period of probation.

Aggrieved of dispensation of his services, the appellant challenged the order in Civil Suit seeking a declaration that the order dispensing with his services is illegal, unjust etc. He also sought a decree for arrears of salary and other benefits. The learned trial Court framed two issues. Issue No.1 was regarding the validity of the order of dispensing with the service of the plaintiff, whereas issue No.2 was regarding the salary. The learned trial Court decreed the suit holding that the order of dispensing with the services of the plaintiff is illegal and punitive in nature and has been passed without affording any opportunity of hearing. Consequently, the learned trial Court decreed the suit for arrears of salary also.

The respondents herein preferred appeal against the judgment

and decree of the learned trial Court before the learned District Judge, Faridkot, who reversed the judgment and decree of the learned trial Court vide impugned judgment and decree dated 04.02.2003. As a matter of fact, two appeals were preferred before the learned District Judge: one by the present appellant and the other by the respondents-Zila Parishad and another. The appeal preferred by the respondent Zila Parishad, Faridkot, and another being Civil Appeal No.19 of 2001 has been allowed, whereas one filed by the present appellant being Civil Appeal No. 15 of 2001 has been dismissed. The learned Lower Appellate Court has ruled that the order of dispensing with the services of the plaintiff, wherein it contains the remarks "work and conduct un-satisfactory", is not punitive in nature.

I have heard the learned counsel for the parties at length and gone through the judgment and decree impugned in this appeal, very carefully.

It is not in dispute that the appellant was on probation when the order dated 13.3.1996 was passed dispensing with his service. This issue is no more res-integra having been decided by the Hon'ble Apex Court. In the case of Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre For Basic Sciences, Calcutta and others, 1999 (3) SCC, 60, the Hon'ble

Supreme Court observed as under:-

> "If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

In the present case, the order dated 13.3.1996 is an innocuous order and the appellant has been discharged from service on account of un-satisfactory work and conduct and also on the ground that his services are no longer required. This clearly falls within the purview of non-stigmatic

order as observed by the Hon'ble Apex Court in the aforesaid case. The

aforesaid judgment has been followed in the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. Of Medical Sciences and another, 2002 (1) RSJ, 271. In another case, namely, State of Punjab and others Vs. Sukhwinder Singh, 2005 (3) SCT, 616, the Hon'ble Apex Court has clearly held that order dispensing with the service of a probationer on account of un-satisfactory conduct, is not punitive in nature. It is settled law that the superior authorities have to judge the employee during the probation. If on account of any laxity on the part of the employee or other conduct or behaviour, the superior authorities are un-satisfied with the performance of the probationer, it is for such authorities to give further opportunity to him or dispense with his service on account of un-satisfactory performance, work and conduct etc. during the period of probation or on its culmination. Such remarks are necessary to disclose the reason for dispensing with the service of a probationer. Otherwise the order could be assailed being un-reasonable. Such remarks do not, in any manner, cast any stigma on the probationer. The learned Lower Appellate Court has rightly observed that the order of the respondents- Zila Parishad is not punitive in nature and hence principles' of natural justice are not

required to be observed. I do not find any ground to interfere with the impugned judgment and decree passed by the learned Lower Appellate Court. This appeal accordingly fails and is hereby dismissed with no order as to costs.

(Permod Kohli)
Judge

May 28, 2007
BLS

Note: To be referred to Reporter. YES/ NO